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IN THE

Supreme Court of the United States

No. 70-5021

GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR, and on behalf of all others similarly situated,

Appellants,

v.

HAROLD O. SWANK, Director, Illinois Department of Public Aid; DAVID L. DANIEL, Director, Cook County Department of Public Aid,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

REPLY BRIEF FOR APPELLANTS TO BRIEF OF APPELLEE WEAVER, SUCCESSOR TO APPELLEE SWANK, DIRECTOR, ILLINOIS DEPARTMENT OF PUBLIC AID.

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I. THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT INVALIDATES ILLINOIS' AFDC SCHEME WHICH DENIES AFDC TO AN 18-21 YEAR OLD CHILD ATTENDING A COLLEGE OR UNIVERSITY WHILE GRANTING SUCH AID TO STUDENTS AT A VOCATIONAL OR TECHNICAL SCHOOL.

A. Introduction

The appellees, Illinois welfare officials, contend that Illinois' scheme of denying Aid to Families with Dependent Children (AFDC) benefits to otherwise eligible 18-21 year old dependent children who are students in attendance at a college or university and granting these benefits to similarly situated children studying at a vocational or technical school is no affront to the Fourteenth Amendment's equal protection and due process clauses. The State submits that the challenged statute and regulation are legitimate ways of allocating its limited resources available for AFDC in that it provides increased benefits for those still eligible for assistance. In support of this allocation the State claims the distinction between the college and vocational students advances certain state interests.[1]

A further basis advanced for the reasonableness of the classification is the extra aid available to college welfare children.

B. Extra Aid for College Welfare Children, Even If In Fact Available, Does Not Save This Classification From Invalidation Under the Equal Protection Clause.

It is claimed that it is not arbitrary to grant AFDC only to students in a technical or vocational school because college and university students have a "wide range of benefits which are not fully available to the former group" (Appellee's Brief at 23). Appellees claim that the provision of college scholarships for high school students receiving AFDC by the Illinois Public Aid Code, 23 Ill. Rev. Stat. 6 4-3 (1969), competitive scholarships, grants and loans "demonstrates that Illinois has made a reasonable choice in designating those attending vocational or technical schools as being more needy than those attending college, or universities" (Appellees' Brief at 26).

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[1]The States does not assert that any of the interests it advances are compelling state interests.

Appellees have failed to inform this Court that the special scholarships for public aid recipients have been abolished. Illinois Legislative Service, 1971 Laws, p. 2049-51 (approved Aug. 27, 1971).

In addition, appellees' own regulation requires that scholarships, loans and grants that are available for meeting current living costs are to be considered as available income in determining need. Illinois Department of Public Aid (IDPA) Categorical Assistance Manual (CAM) § 1062.6:

> 1062.6. Loans and Grants. Loans and grants to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education and other loans or grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs are disregarded.

See 45 C.F.R. § 233.20(a) (3) (iv) (b) (1971). Thus, there is not fat in scholarships, grants or loans for needy children attending college. Any money not used for school expenses would be budgeted by appellees as an available resource or income and deducted from the child's AFDC grant. The implication of the State that needy college children are less needy than needy vocational school children is simply false. AFDC sustenance benefits are necessary for both. It must be concluded that the Illinois statute and regulation totally excluding college children from AFDC bears no relationship to need. *King v. Smith*, 392 U.S. 309, 320 (1968). The appellants submit that the State's argument that it does is specious.

The State has put itself in the anomalous position of encouraging bright children on welfare to get scholarships so they may attend college and then punishes them by flatly denying them AFDC sustenance benefits when they reach 18.

The State's argument has also been previously rejected in this very case. In the single judge court's opinion, 314 F. Supp. 1078 (1969), Judge Marovitz succinctly stated:

> Whether or not plaintiffs are eligible for assistance from other legitimate programs is irrelevant to their claim that they have been discriminated against under the challenged aid program.

Appendix at 40.

Finally, this theory of special assistance to poor school children as a palliative for an equal protection violation has been rejected in a recent and significant decision on the equal protection rights of school children. In *Serrano v. Priest*, 96 Cal. Reptr. 601 (Cal. Sup. Ct., Aug. 30, 1971), 2 CCH Pov. L. Rep. 13,685, the California Supreme Court held California's scheme of financing public education violated the Fourteenth Amendment's equal protection clause. In addition to the State's "Basic State Aid" and "equalization aid", an "additional program of 'supplemental aid' is available to subsidize particularly poor school districts which are willing to make an extra local tax effort." Slip opinion at 11. This was not enough, the court found, to vitiate the affront to equal protection:

> Although equalization aid and supplemental aid temper the disparities which result from the vast variations in real property assessed valuations, wide differentials remain in the revenue available to individual districts and, consequently, in the level of education expenditures.

Slip opinion at 11-12. In the instant case, scholarships, loans and grants can only temper somewhat the disparities and hardships children on welfare face in attempting to secure an education. It must be recognized for purposes of analyzing equal protection mandates that in this case Congress made a determination that the welfare children need the sustenance provided by AFDC. Appellees have not met a standard of reasonableness, or the standard of a necessary compelling state interest adopted by the Court in *Serrano*, which justifies the absolute denial of AFDC to needy college and university students.

C. Denying AFDC Benefits to Welfare Children Who Attend College in Order to Prevent Their Frustration Is Absurd.

Appellants believe that this Court's pronouncement in *Goldberg v. Kelly*, 397 U.S. 254, 265 (1970), that "welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity" is dispositive of appellees contention that individuals made eligible by Congress for AFDC to age 21 will be less disgrunted members of society if the State can cut them off welfare as soon as it can possibly do so.

Appellee welfare officials claim that it is less frustrating to terminate AFDC upon a welfare child's leaving high school than later while he or she is in college (Appellees' Brief at 20). Appellants point out, however, that AFDC benefits in Illinois are not terminated upon completing high school, but upon reaching age 18 and not being in attendance at a technical or vocational school. Appellant Omega Minor received AFDC benefits while attending Southeast Junior College until her eighteenth birthday. Had the benefits been provided until she was 21 she would probably have completed three-and-one-half years of college work.

The frustration of losing benefits after three-and-one-half years is surely not so great as losing them after one-half year as appellees contend. The discouragement of never being able to get off the ground is a much harder one to bear than surmounting an obstacle prior to an almost certain grasp on an important goal. It is also to be noted that under the federal Old Age, Survivors and Disability Insurance program, the benefits of college children terminate upon reaching age 22. Congress, in both the OASDI and the AFDC programs, has rejected the theory advanced here by the State. Sen. Rep. No. 1513, 18th Cong., 2d Sess. 9 (1964).

The appellees have admitted that "[i]t would seem to be in the State's interest that students complete the goal they have undertaken" (Appellees' Brief at 20). The logical conclusion of this argument is that AFDC should be furnished

to a child if he or she starts college before reaching 18. Thus, Omega should have received AFDC benefits. But it must be admitted that the State's logic would only lead to another equal protection violation. It would seem unreasonable to classify children by those who start college before, and those who start after their 18th birthday, an event over which they have no control.

Appellees also assert that "the classification in the Public Aid Code of Illinois does not deny anyone the fundamental right to an education." (Appellees' Brief at 20). As appellees appear to admit, and as the California Supreme Court in *Serrano*, supra, held, education is a fundamental right. Under the doctrine announced in *Shapiro v. Thompson*, 394 U. S. 618, 629, 631 (1969), an unreasonable burden or restriction or penalty on those who exercise fundamental rights will not be tolerated by the Contitution. It is beyond cavil that Mrs. Townsend and her daughter have suffered greatly because of Omega's exercise of this fundamental right.

D. Encouraging Self-Pride in Recipients Is Not Rationally Related or a Compelling Reason To Deny AFDC to Welfare Students Attending College or a University.

Appellees predicate their argument, that encouraging self-pride by requiring people to be self-sufficient as soon as possible is a rational reason for the challenged discrimination, on a view of the AFDC title which claims that the

> . . . primary purpose of welfare legislation is to provide temporary assistance and to make recipients employable and self-sufficient as soon as possible so they may develop pride and feel they are an important part of our society.
> (Appellees' brief at 17).

This position is unsupported by any known authority. From the outset of the Social Security Act the various provisions were known to be for the long range security of American citizens. Sen. Rep. No. 628, 74th Cong., 1st Sess. 17 (1935); Hearings on S. 1130, Committee on Finance,

74th Cong., 1st Sess. 338 (1935). Dr. Edwin E. Witte, Executive Director of the President's Committee on Economic Security testified during the House hearings:

> Our American civilization has concluded that the best way to make provision for these young families without fathers is to make a *long-time provision* under these laws for aid to dependent children, under which the children can be cared for in their own homes and under their mother's guidance. That is the most humane and efficient way of meeting this problem.

(Emphasis added). Hearings on H. R. 4120, Committee on Ways and Means, 74th Cong., 1st Sess. 159 (1936 (See also Dr. Witte's testimony at p. 165: "The term 'children' as we use it here, let us say, under 16, young children, the ones who are below the age of self-support, who under any economic system, must be provided for by someone else".)

Appellants point out that most children receiving welfare assistance come from economically, socially and often racially segregated neighborhoods or communities. Many of these children have been exposed to unattractive and appalling aspects of our society. In the ghettos, murder, robbery, rape, theft, incest, narcotics, gambling, and public welfare are daily fare. Any child who comes out of America's ghettos and welfare system, and makes it into college, has ample self-pride to sustain himself as a responsible citizen.

Furthermore, the government's brief amicus curiae deplores just what the State here advocates:

> The Department believes that the omission of college children from AFDC may have the unfortunate effect of perpetuating poverty and of discouraging some of the most able children of deprived families from realizing their full potential and from assuming the leadership needed in their communities.

(Brief of United States at 9).

E. Avoiding Discrimination Between Welfare Families and the Families of the Working Poor Is Not a Factor in this Case.

Appellee welfare officials assert that in order to prevent an adverse reaction on the part of an alleged "working poor" population it is necessary to deny AFDC to college students while granting it to vocational and technical school students. The argument lacks merit.

In Illinois, there are no "working poor"—appellees do not attempt to define the individuals who might be included within that category. The Illinois Public Aid Code makes complete provision for assuring every resident of the State a standard of living "compatible with health and well-being."[2] 23 Ill. Rev. Stat. § § 1-1, 3-1, 4-1, 5-1, 6-1, and 12-4.11 (1971) (Illinois pays 100 percent of need). The Code also requires "cost-of-living" adjustment in recipient allowances. 23 Ill. Rev. Stat. § 12-4.11 and 12-4.15 (1971); IDPA-CAM § § 1004, 1005 (1970).

Illinois participates in the federal program for families with unemployed and underemployed father. Families with parents employed full time earning less than the public aid standards, and not eligible for one of the federal programs,

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[2]In addition, the State of Illinois as sovereign is now committed to eliminating poverty and inequality. The Preamble to the state constitution adopted in 1970 states it as a fundamental reason for the state's existence:

> PREAMBLE
>
> We, the People of the State of Illinois, grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy, and seeking His blessing upon our endeavors—*in order to provide for the health, safety and welfare of the people;* maintain a representative and orderly government; *eliminate poverty and inequality; assure legal, social and economic justice;* provide opportunity for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity—do ordain and establish this Constitution for the State of Illinois.
>
> (Emphasis added.)

are granted supplemental general assistance, which assures them a livelihood compatible with health and well-being. 23 Ill. Rev. Stat. § 6-1 (1971). Further, when the standards of assistance appellees have set have been challenged, they have been upheld as providing a livelihood compatible with health and well-being. Thus, Illinois does not have the problem some states might face with a working poor population.

However, assuming arguendo that Illinois did face an adverse reaction suggested by appellees, it would not justify this discrimination against welfare students in college. The rationality of the State's classification must be measured against the purposes and provisions of the Social Security Act. Congress has determined that individuals receiving AFDC benefits need this assistance to maintain and strengthen family life, and by implication, has determined that those individuals with income and resources in excess of the state's standard of assistance do not need this assistance. Congress clearly has the power to make this judgment, and any contrary State policy must yield to it. See *Helvering v. Davis*, 301 U.S. 619, 645 (1937).

II. JUDICIAL ENFORCEMENT OF 42 U. S. C. § 602 (a) (10) AND § 606 (a) WILL NOT PLACE A FISCAL BURDEN UPON ILLINOIS, AND WILL REQUIRE MINIMAL AMENDMENT TO THE ILLINOIS STATE PLAN

Appellants' opening brief demonstrated that Illinois need suffer no adverse fiscal effect should judgment be entered in favor of this class of children (Appellants' Brief at 29-31, 41, 49-51, 83). It is conceivable that Illinois could suffer some political consequences caused by a minor reduction in grants should it not wish to appropriate the additional annual state share of $500,000.[3] Congress has decided,

[3]This sum is the estimate of appellee Swank submitted tc the General Assembly in the form of a fiscal note attached to House Bill No. 218, introduced in 1971. The bill would have extended benefits to the appellant class. It passed the Illinois House, but was defeated in the Senate by three votes.

however, that its preference is for a State to reduce aid to all rather than deny aid completely to a class of individuals it has made eligible. H.R. Rep. No. 1300, 81st Cong., 1st Sess. 43 (1949); *Rosado v. Wyman*, 397 U.S. 397, 421 (1970); *Dandridge v. Williams*, 397 U.S. 471, 481 (1970). This same argument that the State advances was advanced by Alabama and rejected in *King v. Smith*, 392 U.S. 309 (1968). As a result of *King*, many states had to revise their state plans to eliminate their "man-in-the-house" rule, and either reduce grants or appropriate more money. What Illinois may have to face in this case is no more than what many other states have had to face, nor was it uncontemplated by Congress. After all, Illinois' participation in the AFDC program is voluntary.

The appellee welfare officials are also afraid that if a decision in favor of appellant children is rendered, the State of Illinois will also be required to extend AFDC "to needy children who are residing with first cousins, nephews or nieces of the dependent child (Ill. Rev. Stat. ch. 23, Section 4-1.2 (1969))" (Appellees' Brief at 44). Appellees' fear is unfounded because Illinois presently allows dependent children to reside with these relatives and grants them AFDC. As a matter of fact, appellee Swank, acting pursuant to the statutory authority of 23 Ill. Rev. Stat. §§ 4-1.2 and 12-13 (1971), has by rule made these children eligible:

> The following relatives, in addition to those specifically named in the Code, (see 350), are approved as relatives with whom a dependent child may live and be eligible for Aid to Dependent Children: (1) any blood relative of the child including *first cousin, niece and nephew* . . . ."

(Emphasis added.) IDPA-CAM, § 351.

It is apparent that Illinois need only add college and university students to its state plan to comply with the definition of dependent children as "students" contained in the Act.

CONCLUSION

For the foregoing reasons, and the reasons stated in appellants' opening brief, the judgment of the district court should be reversed and the cause remanded to the district court with instructions to enter summary judgment for appellant and other appropriate relief prayed for in the complaint.

Respectfully submitted,

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